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Executive Registry

77-8801/1

OLC #77-3714
8 September 1977

SSCI Annual RAB
SSCI
77-0603/7

MEMORANDUM FOR: Director of Central Intelligence

FROM : George L. Cary
Legislative Counsel

SUBJECT : Response to your Request for Comments on
Items in the SSCI Annual Report

REFERENCE : Your Memorandum of 22 August; Subject: SSCI
Annual Report

1. (U) Action Requested: None; for information only.

2. (U) Background: This memorandum is responsive to your request for advice on the several points in the Senate Select Committee on Intelligence Annual Report which you cited in the reference. The individual items are discussed in the attachment.

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Attachment

George L. Cary

Executive Registry

77-8801/3

1. Thanks

2. Let's discuss style of CA reporting when we talk to George Fierst.

This document is unclassified
when attachment is removed.

3. Watch EO on NSC/SEC meeting

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SSCI Annual Rpt.

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SIGNED

George L. Cary

Attachment

Distribution:

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1 - A/DDCI

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Journal - Office of Legislative Counsel
Friday - 26 August 1977

ANNUAL REPORT
SSCI J-24
SSCI
Annual Rpt RPT

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21. [REDACTED] called and said she would be adding Harris Miller, in the office of Senator John A. Durkin (D., N.H.) to her list to receive Book 5 and Sean Randolph, House Republican Study Committee staff, to receive one copy of Book 4.

STAT

22. (Unclassified - JEC) LEGISLATION Called Jim Jura, OMB, to ask about a letter we had sent them several months ago responding to a request from Representative George E. Brown (D., Calif.), Chairman of the House Science and Technology Subcommittee on the Environment and the Atmosphere, for comments on H.R. 6669, a bill to establish a National Climate Program. Jura said that the Administration opposed the bill and that if we wanted to send a letter forward we should beef it up to make this objection clearer. I said I thought we should respond, and he volunteered to return the letter with some suggested changes and with testimony setting forth the Administration's objections.

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2. Study of Current Intelligence Activities Affecting the Rights of Americans

S. Res. 400 expresses

"the sense of the Senate that the head of each department and agency of the United States should keep the select committee fully and currently informed with respect to intelligence activities, including any significant anticipated activities, which are the responsibility of or engaged in by such department or agency."
[Sec. 11(a)]

The subcommittee is continuing its study of intelligence activities as they affect the rights of Americans.

In September 1976, the full committee heard testimony at a public hearing from FBI Director Clarence M. Kelley regarding his reorganization of domestic security functions. In addition to this public hearing, the staff received briefings from FBI officials regarding the reorganization and examined materials relating to FBI policies for domestic security investigations.

Thereafter the subcommittee continued its study of intelligence activities as they affect the rights of Americans. The subcommittee received a series of briefings from representatives of the FBI, the CIA, DIA, and NSA. As part of this study, the staff has analyzed the guidelines issued by the Attorney General for certain foreign intelligence collection and counterintelligence investigations.

A proposal has been made to the Attorney General for regular oversight reporting procedures, and agreement has been reached on the reporting of policy and guidelines material. Further consultation is taking place with the Attorney General and the Director of Central Intelligence on the reporting of case-related materials.

With respect to current executive branch procedures for the supervision of intelligence activities affecting the rights of Americans, the subcommittee has conducted interviews with members of the Attorney General's FBI Investigation Review Unit and the Justice Department's Office of Professional Responsibility. A study has been made of the annual report of this office and the report of its task force inquiry regarding the FBI and Dr. Martin Luther King, Jr. The recommendations contained in these reports have received careful attention.

The subcommittee is also studying current CIA foreign intelligence activities within the United States. While such activities are not directed against Americans, they may have indirect effects upon the rights of Americans. In this area the subcommittee has received briefings, conducted interviews, and compiled Executive branch materials regarding policies and procedures. These oversight activities contribute to the ability of the subcommittee to develop appropriate legislative charter provisions and to recommend more effective legal safeguards.

III. THE COLLECTION, PRODUCTION AND QUALITY OF INTELLIGENCE

The Subcommittee on Collection, Production and Quality of Intelligence is the first congressional effort to both oversee and evaluate the process of intelligence production and analysis—the primary mission of the U.S. intelligence community. Increasingly, the Congress has begun to utilize substantive analysis produced by the intelligence agencies in formulating its position on policy issues, ranging from agriculture to energy to foreign economics. The mandate of the Select Committee on Intelligence, contained in Senate Resolution 400, directly reflects this expanded congressional role. The Intelligence Committee has a key role in insuring that Congress is provided with the intelligence it requires, in insuring that the intelligence community produces the best quality analysis, and that the American intelligence effort is being managed wisely and effectively.

The work of the Subcommittee on Collection, Production and Quality has focused on the preparation of a series of case studies. These studies are intended to provide the Congress, the intelligence community, and the public with an understanding of the analytic process and to illuminate the problems related to intelligence production.

The following case studies which represent a variety of issues have been chosen from a series of studies:

(1) *The Quality and Utility of Intelligence*. This study, based in large measure on the individual case studies mentioned below, draws certain principal conclusions concerning the present and probable future capabilities of U.S. intelligence to produce accurate, timely, relevant, and objective intelligence in support of policymaking; and to be actually and actively used by policymakers, rather than virtually ignored as has sometimes been the case. This study will include specific committee recommendations for improving the quality of intelligence.

(2) *The "A Team-R Team" Exercise*. This study will evaluate the recent competitive exercise between the intelligence community experts and an outside group of experts on Soviet strategic weapons that was commissioned by the President's Foreign Intelligence Advisory Board. The subcommittee's classified report will examine the origins of the exercise, its contribution to the estimative process, and its significance for future estimates.

(3) *Soviet Strategic Weapons Developments*. This study will be a broad examination of Soviet strategic weapons estimates. It will evaluate the estimates' performance regarding numbers of strategic weapons, qualitative weapons developments, and Soviet strategic intentions. The study will also examine the extent to which these estimates have contributed to policy formulation and the ways in which the estimative process might be improved.

- Policy considerations, citing applicable policy documents;
- Justification for a covert effort and how it will supplement overt U.S. action;
- Timing and duration of the operation;
- The relationship of the project to decisions of any previous NSC Committee;
- The risks involved and the possible consequences of disclosure of the operation;
- A plan of action which appropriate U.S. Government elements would take in the event of a disclosure; and
- The estimated cost level, the availability of CIA funds and the need, if any, for new money allocations.

Briefings are given to the committee by CIA, State and any other relevant agency. Additional documentation, if required, is provided by relevant agencies or the committee staff. Action by the committee, if any, can include the following:

- Comment to the executive branch;
- Referral of information to other committees, if appropriate;
- Disclosure under provisions of S. Res. 400, Sec. 8; and
- Funding restrictions.

2. Follow-up

Submission by CIA of a termination/evaluation report is encouraged by the committee. This can lead to briefings and requests for additional documentation. Action by the committee, if any, can include:

- Comment to executive branch; and
- Referral of information to other committees, if appropriate.

3. Semiannual Status Reports on all Covert Action Programs and Projects

In addition to notification and termination/evaluation reports, the committee receives, on a semiannual basis, status reports on *all* current covert action projects.

The semiannual status reports can provide a description of each project, its purpose and intent, its cost, its proposed duration and the risks involved. In addition, the status reports include an evaluation of progress in implementing the project and an assessment of its effectiveness to date. Finally, the status reports indicate the source of funding for continuing approved covert action programs and projects. Briefings by CIA, State and any other relevant agency may be held, and additional documentation, if required, is obtained from agencies or the committee staff. Action by the committee, if any, can include:

- Comment to executive branch; and
- Referral of information to other Committees, if appropriate.

4. Contingency Reserve Fund Release Notifications

The CIA's Contingency Reserve Fund is an Agency-wide account that serves as a substitute for supplemental appropriations made to other agencies. Covert actions not anticipated at the time of budget

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the advice of the committee and gives the committee written notice that he objects to the disclosure of such information, the committee may then take the issue to a closed session of the Senate. The decision to preserve secrecy or to make a public disclosure is by a vote of the full body.

C. REVIEW OF EXECUTIVE PROCEDURES

The committee has had the opportunity to review the Executive's approval procedures for covert action. It is clear that these guidelines are tighter today than ever before. The NSC Special Coordinating Committee meets in regular formal sessions; at times in the past, some covert action projects were approved over the phone. The Secretaries of State and Defense now sit on the committee; in the past, their designated representatives attended. The Attorney General and the Director of OMB are observers at NSC meetings. The Attorney General's presence at these meetings has been particularly important and effective.

There have been other improvements in the review of clandestine activities by the Executive. For example, certain sensitive intelligence collection activities are now reviewed by the NSC. In the past, this was not done. The full NSC now conducts, twice a year, a review of the "continued appropriateness of ongoing covert operations." Never before has the full NSC done this.

The review and approval procedures of the Executive are, in the view of the committee, sound. Increased internal review and thorough congressional oversight have placed major covert action projects under constitutionally appropriate control.

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VI. SECRECY, DISCLOSURE AND CLASSIFICATION

In early February, the select committee created a Subcommittee on Secrecy, Disclosure and Classification. The charge of the subcommittee is to undertake a study of present secrecy laws and regulations, with a special focus on the espionage statutes and the classification rules of the executive branch. It has been asked to develop recommendations for the committee to consider what new legislation or executive action, if any, is necessary to strike a more workable balance between necessary secrecy and the right of the people to be informed of the activities of governmental agencies.

It is the view of the committee that the questions of what constitutes a valid national secret and to what extent new laws are necessary to govern the limits of secrecy, disclosure, and classification are among the most difficult and fundamental issues facing the committee and the Congress. They are threshold questions for public debate over congressional oversight and control of secret operations of the intelligence community. The committee will seek to determine the public consensus on what can and should be kept secret in the name of national security.

When the last Congress enacted Senate Resolution 400, it took the initial steps towards establishing the congressional branch's first formal declassification system. It recognized that oversight protection of secrets and declassification of information were inextricably related.

The experience of the Watergate Committee, the Pentagon Papers case, the Marks-Marchetti case, and recent press disclosures create a compelling record for congressional study of the present security classifications, executive orders, and criminal statutes. Existing laws are inadequate, and serve neither the national security nor the people's right to know. The ambiguities of the law frequently force congressional committees and executive branch officials to act in doubt on matters relating to national security. In the past, both Congress and the press have been denied information and accused of irresponsible "leaks" if they disclose what they learn, and accused of "cover-ups" if they fail to do so. Clearly, this is a dangerous situation that requires remedy.

The committee's purpose is to go beyond the debate on "leaks" or "cover-ups." The subcommittee will begin hearings in the early summer on the present statutes and proposed remedies. Through this hearing process and its own analysis, the subcommittee will examine the nature and substance of the information the intelligence community and its critics believe should or should not be withheld from the public. The committee will make its own assessment of the benefits or damage, if any, that the disclosure of such information might have upon the national security. It will also conduct an in-depth study of the classification system, examining various departmental procedures in use in the executive branch. To the

mittee will conduct its inquiry in public. At the conclusion of the sessions, the subcommittee will make recommendations to the full committee for revision of the relevant statutes and regulations based on that record.

Congress has not undertaken such an effort since 1917, when it wrote the existing espionage laws. Those statutes were written in the heightened political atmosphere of World War I, while the bulk of current executive branch orders and regulations were conceived in the post-World War II cold war era.

The committee begins with the premise that there are legitimate national secrets deserving of protection. The goal of the committee is to frame statutes and to encourage the development of executive branch regulations that define with precision what is and what is not a legitimate national secret. No set of statutes should permit the use of ambiguous language to stifle freedom of speech or inhibit dissent within the executive branch, as many contend is the case with present law. Nor should such statutes permit the disclosure of the names of clandestine agents, as intelligence community officials claim is the case with the present espionage statute. Nor would such laws permit the excessive secrecy which now exists within the executive branch and which jeopardizes both national security and the right of the people to know. As Justice Potter Stewart pointed out in his opinion in the Pentagon Papers case, "When everything is secret, nothing is secret."

VII.

One of the key positive committee oversight authorization. The the annual budgets of expenditures during ture has been given l tory of the Congress tions for all aspects review of covert actio

A. So

In order to gain an reviewed in-depth the ing not only what i foreign intelligence, b lated to national forei annual budgets of the long lead-time progr sary because considera ented and major s, investments.

Beginning in June 1 meetings with the Dir retary of Defense, an cipals. These included intelligence programs . its staff also undertook to gain an understandi interrelationships amon Members and staff ma States and abroad, to a erations. Concurrently, broad structure of the principal future prograi

The subcommittee re legislative proposals and fiscal year 1977. For e: Act of 1964 were consid cial strength of the fu sidered by the full Sen into law on October 1 (P

During February-Apr and analysis of the inte request. The subcommit

Answer. During my confirmation hearings, I stated that I did not believe that in peacetime there would ever be any occasion for this country to engage in political assassinations. Section 5(g) of E.O. 11905 prohibits employees of the United States Government from engaging in political assassination. In addition, the President has publicly stated that he will support legislation making it a crime to assassinate or attempt to conspire to assassinate a foreign official during peacetime.

I share your uneasiness about the propriety of efforts, covert or otherwise, by any external force to "subvert" governments which have come into being by democratic processes and which continue to function as independent democratic governments. Definitional problems could make a statutory prohibition, such as is suggested, very difficult to enforce.

Support for police or other internal security forces which engage in the systematic violation of human rights should be subject to stringent review, rather than prohibited by statute. American intelligence, from time to time, in dealing with important matters such as counterintelligence, anti-terrorism, and the narcotics problem, must deal with foreign security forces whose records on human rights may not be admirable.

Question C. The predecessor committee found that a majority of covert action projects—those that are considered low risk or low cost—can be approved within the CIA. Do you believe, as did the predecessor committee, that all covert action projects, whether high or low risk, should be reviewed by the appropriate National Security Council subcommittee?

Answer. Covert action of any type should be reviewed by the Operations Advisory Group, the National Security Council body established by E.O. 11905 for this purpose. Each major covert action proposal is individually reviewed by this group of senior Government officials. I also favor review, in the aggregate by the OAG, of lesser covert action undertakings, including the covert action infrastructure mentioned above, as recommended by the predecessor committee.

Question D. The predecessor committee strongly recommended that this committee should be informed of all major or significant covert operations prior to their initiation. What are your views on prior notification or consultation? Also, the committee recommended that this Committee should be kept fully and currently informed on all covert action projects and the DCI should submit a semi-annual report on all such projects to the Committee. Do you agree?

Answer. The question of a requirement of prior notification of covert action presents at least serious practical problems. I believe the arrangements worked out to provide the committees the timely notice now required by statute allow opportunity for the informed committees to consult with the Executive on specific programs. Regarding a semi-annual report on covert action, I want to work closely with the new Committee to satisfy its information needs. I am confident that satisfactory arrangements can be reached with the Committee in this regard.

Question E. Finally, how would you like to see the reporting requirements to Congress on covert operations, as found in the Hughes-Ryan amendment to the 1974 Foreign Assistance Act, amended or revised?

Answer. I believe it is essential that Congress concentrate intelligence oversight arrangements to the maximum possible extent consistent with effective oversight. This of course was a driving force behind the creation of the Select Committee. However, the Hughes-Ryan amendment requirement of reports to so many committees remains a barrier to concentrated oversight. I would therefore support a repeal of the Hughes-Ryan amendment. Our congressional oversight committees do need to be kept informed of covert action, but the statutory base for such reporting should more logically and appropriately be a general reporting requirement in the National Security Act.

III. CIA RELATIONS WITH U.S. INSTITUTIONS AND PRIVATE CITIZENS

Question A. As you know, the predecessor committee looked into the question of CIA relations with U.S. institutions—the press, academic and religious institutions—and private citizens. The Committee was concerned that the clandestine relations might compromise the independence and integrity of these groups and undermine public confidence in them. What are your thoughts on this matter?

Answer. I share the view that the integrity of U.S. institutions and of American citizens as individuals must be preserved. I am equally concerned that Americans of all professions maintain the freedom of choice to cooperate with their Government voluntarily and knowingly according to the dictates of their own conscience.

nually authorized. The committee is now studying whether the Director should be charged with preparing a budget for national intelligence activities and controlling the budgets for entities of the intelligence community.

In addition, to facilitate oversight, the committee is considering whether all but specifically appropriated "unvouchered funds" which would be accounted for on the Director's certificate should be open to GAO audit under appropriate security safeguards. Finally, the possibility of statutory controls on the Director's Contingency Reserve and on receipts from CIA proprietaries is under study.

3. Review of Clandestine Activities

Of great concern to the committee has been the procedures for the review of sensitive intelligence activities including clandestine collection and covert action. The committee believes Presidential approval should be required by statute for certain forms of sensitive clandestine activities. The committee is attempting to define such activities and the standards to be required for Presidential approval. In addition, the committee is studying the factors, such as the justification for the proposed activity, its nature, scope, legality, probability of success, and estimated cost, which should be considered in any review by the executive branch. The committee is reviewing the role, if any, to be played in executive branch review procedures by U.S. Ambassadors to countries which would be affected by such activities.

The committee is also concerned with statutory provisions regarding congressional oversight of clandestine activities. For oversight to be effective and for Congress to play its constitutional role, appropriate committees of Congress must be notified prior to the implementation of any clandestine activity. In addition, the Congress should have available, at least annually, written reports on clandestine activities.

4. Restrictions on Clandestine Collection and Covert Action

The committee is reviewing possible restrictions and prohibitions on the clandestine activities of the United States. Among such possible prohibitions are forbidding entities of the intelligence community from paying or providing other valuable consideration for information or operational assistance to:

- any individual following a full-time religious vocation,
- any U.S. grantee abroad, and
- anyone accredited or regularly contributing material to, regularly involved in the editing of material for, or in the setting of policy of, a U.S. media organization.

Also under consideration is a prohibition on intelligence community support for public distribution within the United States of any materials unless such support is publicly announced. This would prevent the government using the intelligence community to propagandize our citizens.

Covert paramilitary activities such as those conducted in Laos are also under study. One possible reform under consideration is bringing

such activities under pre Act.

Possible prohibitions on committee's attention. A ited are those whose of terrorism, the creation o governments. The comm these activities. It also re statutory provisions and lations which can be mo gressional scrutiny.

5. Counterintelligence

The committee believe the U.S. must be careful is considering the establ which would assist the P ge nce policy and objective and assure that they do r also establish uniform sta activities and assess the fo States and the success of t is whether counterintellig impact on the national se of the United States or rig tion or laws of the United and congressional review other clandestine activities

6. Oversight and Accountability

In order to assure that i formity with the Constitu guard, and do not abridg effective mechanisms for c be achieved. The committ posed oversight mechanis sight Board (established newed by the President; provide the IOB with a st

Centralizing responsibil ual would also dramatic ability to the Congress a charged with oversight of by the subcommittee. Suc on the nature and extent United States to their re attention to their respecti any relevant matter. At th having the head of the int appropriate committees of charged, by statute, with

such activities under procedures similar to those of the War Powers Act.

Possible prohibitions on covert action have also been brought to the committee's attention. Among covert actions which might be prohibited are those whose objective is assassination of foreign leaders, terrorism, the creation of epidemics and the overthrow of democratic governments. The committee appreciates the difficulty in defining these activities. It also recognizes the need to strike a balance between statutory provisions and executive branch, Executive orders or regulations which can be more detailed but which are still subject to congressional scrutiny.

5. Counterintelligence

The committee believes that the counterintelligence activities of the U.S. must be carefully reviewed and coordinated. The committee is considering the establishment of a counterintelligence committee which would assist the President in the formulation of counterintelligence policy and objectives, assure unified direction of such activities, and assure that they do not violate the law. Such a committee might also establish uniform standards and doctrines for counterintelligence activities and assess the foreign intelligence threat posed to the United States and the success of the U.S. responses. Also under consideration is whether counterintelligence activities which may have a significant impact on the national security, national defense, or foreign relations of the United States or rights guaranteed or protected by the Constitution or laws of the United States should be subject to executive branch and congressional review procedures similar to those employed for other clandestine activities.

6. Oversight and Accountability

In order to assure that intelligence activities are carried out in conformity with the Constitution and laws of the United States and safeguard, and do not abridge, the rights of Americans, there must be effective mechanisms for oversight. Effective accountability must also be achieved. The committee is therefore examining existing and proposed oversight mechanisms. One such group, the Intelligence Oversight Board (established by E.O. 11905), has been reviewed and renewed by the President; the committee is considering whether to provide the IOB with a statutory charter.

Centralizing responsibility for intelligence activities in one individual would also dramatically increase accountability. The accountability to the Congress and the public of congressional committees charged with oversight of intelligence activities is also under scrutiny by the subcommittee. Such committees should make periodic reports on the nature and extent of the national intelligence activities of the United States to their respective bodies and should promptly call attention to their respective houses or the appropriate committees on any relevant matter. At the same time consideration should be given to having the head of the intelligence community report annually to the appropriate committees of the Senate and the House; he might also be charged, by statute, with making annual reports to the public.

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

DCI Statements SSCI Annual Report

OLC #77 3622

FROM:

SA/DO/O
2D0109

EXTENSION

NO.

DATE

26 August 1977

STAT

TO: (Officer designation, room number, and building)

DATE

RECEIVED

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OFFICER'S
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

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